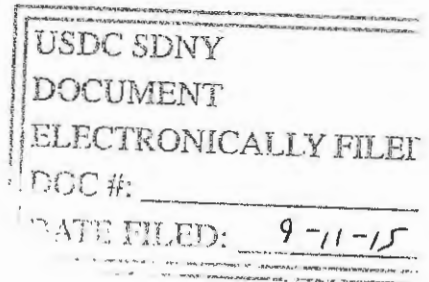


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----X
DR. ANIL AGARWAL and MADHU
AGARWAL,

Plaintiffs,

-against-

UNITED STATES OF AMERICA, *et al.*,

Defendants.
-----X

14 Civ. 1873 (PAC) (KNF)

**ORDER ON REPORT AND
RECOMMENDATION**

HONORABLE PAUL A. CROTTY, United States District Judge:

Pro se Plaintiffs Dr. Anil Agarwal and Madhu Agarwal (collectively, "Plaintiffs") brought this action against multiple defendants alleging violations of their constitutional rights. This order addresses the motions to dismiss filed by Defendants Edward T. Rogan (Dkt. 27); the Honorable Patrick J. Roma, J.S.C., the Honorable Roy F. McGeady, P.J.M.C., the Honorable Peter E. Doyne, A.J.S.C., the Honorable Francine I. Axelrad, J.S.C., the Honorable Paulette-Sapp Peterson, J.A.D., the Honorable Joseph F. Lisa, J.A.D., the Honorable Jack M. Sabatino, J.A.D., Joseph H. Orlando, the Honorable Thomas P. Olivieri, J.S.C., the Honorable Peter F. Bariso, A.J.S.C., the Honorable Alvaro L. Iglesias, J.S.C., the Honorable Maurice J. Gallipolli, J.S.C., the Honorable Michael L. Ravin, J.S.C., the Honorable Kenneth J. Slominski, J.S.C., the Honorable Hector R. Velazquez, P.J.Ch., and Silvia Gonzalez (collectively, the "State of New Jersey Judiciary Defendants") (Dkt. 31); Sandy DeLoRenzo, Hudson City Savings Bank, Custodian of Records for Hudson City Savings Bank, and Gerry Michata (collectively, the

“Hudson City Bank Defendants”) (Dkt. 36); “any and all Employees and Council Members of McAdoo, PA” (collectively, the “McAdoo Defendants”) (Dkt. 46); Kristina Gandolfo Murtha and Goldbeck McCafferty & McKeever (collectively, the “GMM Defendants”) (Dkt. 53); Michael Ackerman (Dkt. 58); HSBC Bank USA, N.A. (“HSBC”) (Dkt. 65); the Honorable Jacqueline Russell (Dkt. 71); and “Any and All Employees and Council members of Bayonne, Bayonne NJ” and “Judge Frank T. Carpenter, Bayonne Municipal Court, Bayonne, NJ” (collectively, the “Bayonne Defendants”) (Dkts. 75 and 81). Additional motions to dismiss have been filed and remain pending. The Court previously granted motions to dismiss the complaint brought by Defendants Borough of Lodi, Edward Reuter, Vincent J. Caruso, Gary Paparozzi, Judge Scott G. Sproviero, Borough Clerk of Lodi, Judge Tracie Nunno-D’Amico, Judge Giuseppe Randazzo, Carol DeFalco, Lodi Police Officers #1 and 2, Judge Gregg A. Padovano, Ronald Dario, and the Borough of Maywood for failure to state a claim. Dkt. 86.

Magistrate Judge Kevin Nathaniel Fox issued a separate Report and Recommendation (“R & R”) on each of the motions listed above. With respect to Defendants Ackerman, the McAdoo Defendants, HSBC, the Bayonne Defendants, and Russell, Magistrate Judge Fox recommends denying the motions to dismiss. Dkt. 124, 125, 126, 127, 132, 133. This recommendation is based on the fact that these defendants have moved to dismiss Docket 24, Plaintiffs’ self-styled “Amended Petition,” instead of the operative complaint, filed on May 30, 2014, at Docket 7. The R & R asserts that these movants are not defendants in the action and so cannot move to dismiss the complaint. With respect to Rogan and the Hudson City Bank Defendants, the R & R states that while they are named as defendants in the operative complaint, their motion relied on the incorrect complaint, and therefore “analyzing the document that is Exhibit A to Rogan’s certification . . . would be a useless exercise” and “granting the instant

motion to dismiss, which is not made against the actual amended complaint filed by the plaintiffs in this action, is not warranted.” Dkt. 119 at 8; *see also* Dkt. 121 at 8.

With respect to the State of New Jersey Judiciary Defendants, Magistrate Judge Fox recommends granting the motion to dismiss for failure to state a claim, but recommends denying the motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) and (2). Dkt. 120. Magistrate Judge Fox recommends granting the GMM Defendants’ motion to dismiss for failure to state a claim. Dkt. 123.

Rogan, Russell, the State of New Jersey Judiciary Defendants, and the McAdoo Defendants filed Objections to the R & R. Dkt. 136, 138, 139, 140. Rogan argues that he was never served with the earlier complaint, and that the operative complaint itself fails to state a claim. Dkt. 136. The State of New Jersey Judiciary Defendants object to the R & R’s recommendation that the motion to dismiss for lack of personal jurisdiction be denied. Dkt. 138. The McAdoo Defendants argue that under Fed. R. Civ. P. 12(b)(4), because they were added to the docket sheet and considered to be defendants, they are entitled to move to dismiss for insufficient process or insufficient service of process. Dkt. 139. Russell argues, *inter alia*, that Fed R. Civ. P. 12(b)(4) allows her to move for insufficient process, that the Court lacks personal jurisdiction over her, that she has absolute judicial immunity, and that the complaint fails to state a claim for relief. Dkt. 140. In addition, Plaintiffs filed “Constitutional Objections to various Recommendation’s [sic] dated July of 2015.” Dkt. 141. Plaintiffs state that “they have no objection[s]” to Magistrate Judge Fox’s R & R—the remainder of Plaintiffs’ response is nonsensical.

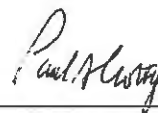
The Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where a party makes a timely written objection, the district court must review the contested issues *de novo*. See *Arista Records, LLC v. Doe 3*, 604 F.3d 110, 116 (2d Cir. 2010).

Those movants not named in the operative complaint are dismissed, as they are not defendants in the pending action. Moreover, both the operative complaint and the “Amended Petition” fail to state a claim against any moving defendant. Accordingly, Rogan and the Hudson City Bank defendants are also dismissed.

The Court adopts the R & R regarding the State of New Jersey Judiciary Defendants to the extent that it recommends granting their motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). The Court need not reach the portion of the R & R recommending denial of the motion on other grounds. The Court adopts the R & R recommending that the GMM Defendants’ motion to dismiss be granted.

The Clerk of Court is directed to terminate the motions at Docket Numbers 27, 31, 36, 46, 53, 58, 65, 71, 75, and 81. Those movants and defendants are dismissed from the case. The reference to Magistrate Judge Fox is continued.

SO ORDERED:



PAUL A. CROTTY
United States District Judge

Dated: September 9, 2015
New York, New York

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